

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 949 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

SHAH MANEKLAL DHARAMCHAND

Appearance:

Mr. K.C. Shah, AGP, for appellant
NOTICE SERVED for Respondent No. 1
MRS KETTY A MEHTA for Respondent No. 2

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 17/06/1999

ORAL JUDGEMENT

1. By means of filing this appeal under Section 54 of the Land Acquisition Act, 1894, ('Act' for short), read with Section 96 of the Code of Civil Procedure, 1908, the State of Gujarat has challenged legality of the judgment and award dated November 21, 1980, rendered by the learned Assistant Judge, Mehsana, in Land Acquisition Reference No. 26 of 1977.

2. The Commissioner, Gujarat Housing board, made a proposal to the Collector, Mehsana, to acquire on permanent basis certain lands including the land bearing Survey No.1995/72, admeasuring 76 Are 11 Sq.mtrs., belonging to respondent No.1, situated in the sim of

Mehsana town, vide letter dated November 1, 1972. Accordingly, notification under Section 4(1) of the Act was issued, which was published in the Government Gazette on March 15, 1973, which was followed by publication of notification under Section 6 of the Act on July 26, 1973. The person interested, i.e. respondent No.1, was served with notice under Section 9 of the Act. Pursuant to the said notice, respondent No.1 lodged his claim before the Land Acquisition Officer and claimed compensation at the rate of Rs.30/- per sq.mtr of the acquired lands. The Land Acquisition Officer after considering the materials placed before him offered compensation to the claimant at the rate of Rs.10 per sq.mtr. by his award dated July 20, 1974. According to the claimant, the offer of compensation was inadequate and, therefore, he submitted application in writing under Section 18 of the Act requiring the Land Acquisition Officer, to refer the matter to the Court for the purpose of determination of compensation. Accordingly, reference was made to the District Court, Mehsana, which was numbered as Land Acquisition Reference No.26 of 1977. The appellant contested the reference application by filing its written objections at Exh.12, inter alia, contending that the application for reference was beyond the prescribed period of limitation and the awarded amount by the Land Acquisition Officer was adequate and the claim application be dismissed. The reference court framed issues at Exh. 15. The claimant adduced oral as well as documentary evidence to substantiate his claim for compensation at the rate of Rs.30 per sq.mtr. The claimant examined witnesses Kantilal Jasanglal at Exh.43, Kantilal Joitaram, at Exh.62 and Ambalal Chandulal at Exh.65. The claimant also produced documentary evidence in the nature of sale deeds, etc. On behalf of the acquiring body, witness, Somabhai Parsottamdas, was examined at Exh.76. The Reference Court, after appreciating oral as well as documentary evidence, determined market price of the acquired land at the rate of Rs.20/- per sq.mtr by awarding additional compensation of Rs.87,526.50 ps with 4.1/2% interest per annum by judgment and award dated November 21, 1988, which has given rise to the present appeal.

3. The learned Assistant Government Pleader, Mr. K.C. Shah, appearing for the appellant, and the learned advocate, Mrs. Ketty A. Mehta, appearing for the acquiring body (respondent No.2), have taken me through the entire evidence produced on the record of the case. The learned Assistant Government Pleader appearing for the appellant and the learned advocate appearing for the acquiring body have vehemently submitted that the market

price determined by the Reference Court is excessive and the Reference Court has erred in not placing reliance on the oral evidence of witness, Somabhai Parsottamdas, Exh.76. The learned counsel also pleaded that, as per the evidence of witness, Somabhai Parsottamdas, the acquired land was sold to respondent No.1 prior to one year of the date of the acquisition for a consideration of Rs.11,000/-, the rate of which comes to Rs.10 to 11 per sq.mtr. It is, therefore, vehemently submitted by the learned counsel for the appellant and the acquiring body (respondent No.2) that, if the evidence of witness, Somabhai Parsottamdas, is taken into consideration, determination of market value of the acquired land at the rate of Rs.20/- per sq.mtr is highly excessive and, therefore, the appeal may be allowed.

4. The respondent No.1-original claimant was duly served, but he has neither appeared personally nor through advocate.

5. Before the Reference Court, sale deeds were relied upon by the claimant and those sale deeds were proved by witnesses, Kantilal Joitaram and Ambalal Chandulal. The Reference Court has given cogent and convincing reason to the effect that the sale deeds relied upon by the claimant were not relevant in determination of market price of the acquired land. The Reference Court mainly relied upon earlier award Exh.21 which related to the adjoining land to the acquired land, bearing Survey No.1995/73, which was also acquired by the Housing Board for the same purpose by notification dated March 15, 1973, and the Reference Court had determined the market price of the acquired land bearing Survey No.1995/73 at the rate of Rs.20/- per sq.mtr. by judgment and award dated April 24, 1978 in Land Acquisition References Nos.15 of 1976 and 35 of 1975.

6. It is settled principle that the previous award, by which the market value of the adjoining land has been determined, provides a good guide for determining the compensation for the similarly situated lands and notification of which was published in proximity of time compared to the notification of the previous award. As mentioned earlier, the acquired lands, which were subject matter of award Exh.21, were acquired by issuance of notification under Section 4(1) of the Act on March 15, 1973 and the acquired land which is subject matter of the present appeal was also acquired by notification issued under Section 4(1) of the Act on March 15, 1973. The lands which were subject matter of earlier award Exh.21 bearing Survey No.1995/73, are adjoining to the acquired

land in the present appeal, i.e., Survey No.1995/72. Both the lands were adjoining to each other, having the same fertility and potentiality. The purpose of acquisition was also for construction of housing scheme. The situation of both the acquired lands was the same and they were abutting on the national highway. Therefore, in my opinion, the Reference Court had not committed any error in placing reliance on the earlier award Exh.21 in determining market price of the acquired land in the present case.

7. Submission of the learned counsel for the appellant and the acquiring body that the Reference Court ought to have placed reliance on the oral evidence of witness Somabhai Parshottamdas, Exh.67, who was examined by the acquiring body, and according to whose version, the acquired land was sold by the witness to respondent No.1 on February 12, 1971 for a consideration of Rs.10,000, and the Reference Court ought to have taken into consideration the fact that the acquired land was sold at the rate of Rs.10 to 11 in the year 1971 and therefore the determination of the market value of acquired land on the relevant date at the rate of Rs.20/- was highly excessive, in my opinion, is devoid of any merit and deserves to be rejected. Witness, Somabhai Parshottamdas, Exh.67, admitted in his examination in chief that the land bearing Survey No.1995/72 was disputed land and, therefore, the said land was sold at a lower price. In cross examination, the witness further admitted that, prior to sale of the acquired land to respondent No.1, an agreement to sale was executed between him and one Kuber Sambhav. As the sale between Kuber Sambhav could not be materialised, the land was sold to respondent No.1 at a throw away price. In view of this admission of the witness, Somabhai Parshottamdas, Exh, 67, in my view, the sale transaction of the acquired land which had taken place in the year 1971 between witness Somabhai Parshottamdas and respondent No.1, cannot be called as a sale between a willing buyer and a willing seller and it cannot be termed as genuine sale reflecting the correct market price of the acquired land in the year 1971. The Reference Court has also dealt with this piece of evidence in paragraph 22 of its judgment. I do not find any irregularity in the conclusion arrived at and reasoning recorded by the Reference Court while rejecting the evidence of Somabhai Parshottamdas, Exh.67.

8. It may be noted that one of the methods of determining the market value of the acquired land is the sale transaction entered into between the willing seller

and the willing purchaser which is in proximity to the date of notification and which related to the similarly situated and adjacent lands. When the Reference Court did not find sale instance relied upon by the claimant and the acquiring body relevant for determining the market price of the acquired land, then the Reference Court was left with no other alternative, but to take resort to relying upon the earlier award which was related to the adjacent land which was acquired by Section 4(1) notification of the same date. Witness, Kantilal Jasanglal, Exh.43, in paragraph 8 of his deposition, had given description of the acquired land in the present appeal, and the acquired lands which were subject matter of earlier award Exh.21. In the said paragraph, the witness deposed that the acquired lands, which were subject matter of award Exh.21, were situated at the back side of the present acquired land and the situation of the present acquired land was better than the acquired lands of award Exh.21. Taking into account the aforesaid fact, in my view, determination of compensation at the rate of Rs.20/- per sq.mtr for acquired lands cannot be said to be excessive or exorbitant. Map, Exh.24, also shows that the acquired land bearing Survey No.1995/72 was having better situation than the acquired lands bearing Survey No.1995/73. Both the lands were adjoining to each other and therefore the earlier award Exh.21 was most comparable for determination of market price of the present acquired land. Therefore, the method adopted by the Reference Court for determination of acquired land by relying upon earlier award Exh.21 is quite just and proper. On over all view of the matter, it cannot be said that excessive compensation is awarded to the claimant warranting interference of the Court in the present appeal. No ground is made out by the appellant for setting aside the award and the appeal will have to be dismissed.

10. For the foregoing reasons, the appeal filed by the appellant fails and is dismissed with no order as to costs.

(swamy)